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IN THE

Supreme Court of the United States

October Term, 1965

No. [redacted] 147

BALDWIN-HALL, INC.,

Petitioner,

v.

THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE STATE OF NEW YORK

REPLY BRIEF

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IN THE

Supreme Court of the United States

October Term, 1965

No. 1327

BALDWIN-HALL, INC.,

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THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE STATE OF NEW YORK

REPLY BRIEF

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(1) It cannot be disputed that Petitioner suffered substantial economic loss by reason of the highway reconstruction.

For the first time in the history of this litigation the State contends that petitioner suffered no economic loss as a consequence of the highway reconstruction. This argument is advanced despite the unreversed findings of the Court of Claims that the value of the property prior to

reconstruction was $122,000 and the value after was $65,000 (R. p. 11, App. p. 16a). And to support this argument, the brief in opposition to the petition states what purport to be "basic facts" which are not followed by references to the record and which are not contained in the record.

Petitioner disclaims the truth of the statements at pages 9 and 10 of respondent's brief that petitioner's central location was less desirable for its retail and wholesale business than outlying areas, or that it paid $.25 a square foot for land to relocate, or that it purchased the land from Donald Pomeroy, or that its relocation in the Town of Dewitt was a matter of choice rather than due to the fact that no central space was available. Moreover, petitioner protests the allegation that it acted in other than good faith and according to its best business judgment in the efforts made to relocate its business.

(2) The denial of any and all compensation presents a constitutional question.

Although no compensation was allowed to petitioner, respondent seems to be arguing at pages 1 and 2 of its brief that there is no constitutional question because the only issue is the amount of compensation to which petitioner is entitled. Without belaboring the obvious, petitioner wishes to point out that the cases cited do not support the argument. Instead, they illustrate that this Court will listen to at least one of the constitutional questions raised in the petition — whether the State has applied a rule of law in absolute disregard of petitioner's right to compensation or a rule of law which makes it impossible for it to obtain just compensation.

In addition, although respondent cites *Sauer* v. *City of New York*, 206 U. S. 536 (1907), affg. 180 N. Y. 27, 72 N. E. 579 (1904) which held that loss of access and diminution in

market value of an abutting owner's property caused by construction of an elevated viaduct along the street was *damnum absque injuria* in the absence of a statute permitting compensation (180 N. Y. at 30; 72 N. E. at 579), respondent fails to cite the subsequent case, *People ex rel Crane* v. *Ormond*, 221 N. Y. 283, 116 N. E. 993 (1917), involving the same claim made later, under a change of grade statute, in which the only question was whether the viaduct constituted a change of grade.

CONCLUSION

For the reasons set forth above and in the Petition For a Writ of Certiorari, it is respectfully submitted that Certiorari should be granted.

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